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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.Nos.1081 and 996 of 2016

S.Durai

... Petitioner in Crl.R.C.1081/2016/ Petitioner

Kalaivani

... Petitioner in Crl.R.C.996/2016/ Petitioner No.1

Vs.

1.Kalaivani

2.Rajeswaran

3.Minor Narendran

(rep. by mother/  
first respondent)

... Respondents in Crl.R.C.1081/2016/ Petitioner

S.Durai

... Respondent in Crl.R.C.996/2016/ Respondent

Prayer in Crl.R.C.No.1081 of 2016:

Criminal Revision Case filed under Sections 397 and 401 of the Criminal Procedure Code seeking to set aside the order dated 17.03.2016 in M.C.No.51 of 2008 on the file of the Family Court salem and to dismiss the Maintenance Petition.

Prayer in Crl.R.C.No.996 of 2016:

Criminal Revision Case filed under Sections 397 and 401 of the Criminal Procedure Code seeking to set aside the order dated 17.03.2016 in M.C.No.51 of 2008 on the file of the Family Court, Salem only in so far as it relates to the grant of maintenance to the petitioner from 08.03.2016.

For Petitioners : Mr.V.Sekar in Crl.R.C.1081/2016  
Mr.K.Selvaraj in Crl.R.C.996/2016

For Respondents : Mr.K.Selvaraj in Crl.R.C.1081/2016  
Mr.V.Sekar in Crl.R.C.996/2016



## C O M M O N        O R D E R

These criminal revisions have been filed challenging the order dated 17.03.2016 passed in M.C.No.51 of 2008 by the Family Court, Salem.

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2.The petitioner in Crl.R.C.No.1081 of 2016 is the husband of the first respondent in Crl.R.C.No.1081 of 2016/ petitioner in Crl.R.C.No.996 of 2016 and father of respondents 2 and 3 in Crl.R.C.No.1081 of 2016. Aggrieved by the maintenance awarded by the Family Court, the husband has filed Crl.R.C.No.1081 of 2016 and since maintenance has been awarded from the date of divorce for the wife instead of from the date of petition, the wife has filed Crl.R.C.No.996 of 2016. Since the issue involved in both the revisions are one and the same, they are clubbed together and disposed of by way of a common order.

3.The marriage between the petitioner in Crl.R.C.No.1081 of 2016 and the petitioner in Crl.R.C.No.996 of 2016 was solemnized on 06.07.1992 as per the Hindu Rites and Customs and they were blessed with two male children. For better appreciation, the petitioner in Crl.R.C.No.1081 of 2016 would be hereinafter referred to as 'husband' and the petitioner in Crl.R.C.No.996 of 2016 would be hereinafter referred to as 'wife'.

4.Thereafter, dispute arose inbetween them and the husband filed FCOP No.264 of 2010 before the Family Court, Salem, seeking divorce and the said petition was allowed on 08.03.2016. The wife had filed M.C.No.51 of 2008 before the Family Court, Salem, seeking maintenance of Rs.3000/- each for herself and two children. On 17.03.2016, the Family Court, Salem, allowed the same and awarded maintenance of Rs.6,000/- for the wife till her lifetime, Rs.3,000/- for the first son till he attain the age of majority and Rs.6,000/- for the second son till he attain the age of majority. Challenging the same, these petitions have been filed.

5.The learned counsel appearing for the husband would submit that divorce was granted on the ground of adultery and mental cruelty. As per Section 125(4) of Cr.P.C., if the wife is involved in adultery, she is not entitled for maintenance, however, the children are entitled for maintenance. He would further submit that the wife claimed only a sum of Rs.3,000/- each for herself and children, however, the Family Court has awarded Rs.6,000/- for the wife, Rs.3,000/- for the first son and Rs.6,000/- for the second son which is exorbitant one.

6.The learned counsel appearing for the wife would submit that as against the order of divorce, the wife has filed CMA No.2305 of 2016 and the same has been admitted and is pending. He further submitted that the wife and children are entitled for



maintenance from the date of petition, however, the Family Court has awarded maintenance for the wife only from the date of divorce, which is un-sustainable one.

7. Heard both sides and perused the materials placed on record.

8. The facts of the case and the relationship between the parties are not in dispute. The grievance of the husband is that divorce was granted on the ground of adultery and cruelty, hence the wife is not entitled for maintenance. However, the order of divorce reveals that divorce was granted on the ground of cruelty. Hence, Section 125(4) of Cr.P.C. is not applicable to the present case on hand.

9. The next issue this Court has to decide is whether the maintenance awarded is exorbitant one. Though the wife claimed only Rs.3,000/- each for herself and two children as maintenance, the said petition was filed during the year 2008, hence, the Family Court, considering the cost of living at the time when the order was passed, awarded Rs.6,000/- for the wife till her lifetime, Rs.3,000/- for the first son till he attain the age of majority and Rs.6,000/- for the second son till he attain the age of majority, which is just and reasonable, however, maintenance should have been awarded to the wife from the date of petition.

10. In view of all the above, CrI.R.C.No.1081 of 2016 filed by the husband is dismissed and CrI.R.C.No.996 of 2016 filed by the wife is allowed.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

pri  
To

1. The Judge Family Court,  
Salem.

+1cc to Mr.K.Selvaraj, Advocate, S.R.No.37825  
+1cc to Mr.V.Sekar, Advocate, S.R.No.38230  
+1cc to Mr.V.Sekar, Advocate, S.R.No.38229(09/09/2021)

CrI.R.C.Nos.1081 and 996 of 2016

SR-II(CO)  
CT/25/08/2021